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OFFICE OF PETITIONS

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In re Patent No. 8,112,330
Issued: February 7, 2012
Application No. 09/671,424
Filed: September 27, 2000
Attorney Docket No CITI-0209

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705" filed December 30, 2011 requesting that the patent term adjustment determination for the above-identified patent be corrected to 3786 days. Since the patent has now issued, the request is being treated under 37 CFR 1.705(d). Applicant requests this correction in part on the basis that the Office will take in excess of three years to issue this patent in light of the Court of Appeals for the Federal Circuit's decision in *Wyeth v. Kappos*, 2009-1120 (Fed. Cir. 1-7-2010).

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent, is adjusted by three thousand six hundred ninety six (3696) days and is **GRANTED to the extent indicated herein**.

After a review of the record, it is undisputed that the period of examination delay, "A" delay", pursuant to 37 CFR 1.702(a)(1) is 792 and the delay pursuant to 37 CFR 1.702(a)(2) is 171 days. A review of the record reveals however that the period of examination delay in the amount of 486 days, calculated for the mailing of the Examiner's Answer on June 11, 2009 is incorrect as the application was under appellate review since April 26, 2007 and thus, that period of delay is being removed. The total of examination delay, "A" delay is therefore 963 days.

The "B" delay period, the over three year period begins on September 26, 2003 and ends on February 7, 2012, for a total of 3055 days. Additionally, the over three year period consumed by appellate review, beginning on April 26, 2007 and ending on August 3, 2012, is not included in the B delay. The Office has also determined that there is no overlap and has removed the period previously calculated as overlap. Thus, the total "B" delay is 1494 days. See 35 U.S.C. § 154(b)(1)(B)(ii).

"C" delay in this instance is as indicated, 1561 days.

Applicants argue that the filing of the compliant Response occurred 230 days following the day after the non-compliant response was filed (i.e., April 29, 2004), thereby resulting in Applicant delay of 230 days, not 440 days as calculated by the USPTO. A review of the record reveals that pursuant to 37 C.F.R. §1.704(c)(7), the response was in fact filed December 15, 2004, not July 12, 2005 and thus, instead of a 440 day reduction for applicant delay, 231 days should have been accorded. Further, as the application was under appellate review the period of reduction for the Information Disclosure Statement (IDS) filed January 7, 2008, 131 days, is being removed.

As such, the patent term adjustment is 3696 days (963 "A delay" days plus 1494 "B delay" days plus 1561 "C" delay days minus 322 days applicant delay), not 3786 days.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **three thousand six hundred ninety-six (3696) days**.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 8,122,330 B1

DATED : February 7, 2012

INVENTOR(S) : Michael L. Gandcolas

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (3148) days

Delete the phrase "by 3148 days" and insert – by 3696 days--